Supreme Court, U.S.
FILED
JAN 15 1999
OFFICE OF THE CLERK

No. 98-7809 (2)

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

SALVADOR MARTINEZ — PETITIONER
(Your Name)

RECEIVED
JAN 15 1999
OFFICE OF THE CLERK
SUPREME COURT, U.S.

VS.

STATE OF CALIFORNIA, ET. AL — RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

[ ] Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

⋈ Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

Petitioner's affidavit or declaration in support of this motion is attached hereto.

Salvador Martinez
(Signature)

20 pp

AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

I, SALVADOR MARTINEZ, am the petitioner in the above-entitled case. In support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

I further swear that the responses I have made to the questions and instructions below relating to my ability to pay the cost of proceeding in this Court are true.

1. Are you presently employed? Yes ___ No ✓

a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.

b. If the answer is no, state the date of your last employment and the amount of salary or wages per month which you received.

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other sources? Yes ___ No ✓

a. If the answer is yes, describe each source of income and state the amount received from each during the past twelve months.

3. Do you own any cash or have a checking or savings account? Yes ___ No ✓

a. If the answer is yes, state the total value of the items owned.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing) Yes ___ No ✓

a. If the answer is yes, describe the property and state its approximate value.

5. List the persons who are dependent upon you for support and state your relationship to those persons.

I declare under penalty of perjury that the foregoing is true and correct.
Executed on: Jan. 11, 1999.

Salvador Martinez
(Signature)

CC APPEAL-4TH DIST. DIV. 3
FILED
OCT 16 1998

Deputy Clerk

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. SALVADOR MARTINEZ, Defendant and Appellant.	G024042 (Super. Ct. No. 98CF1062) ORDER

Appellant's motion to represent himself on appeal is DENIED. (*In re Walker* (1976) 56 Cal.App.3d 225.)

SILLS, P.J.
SILLS, P.J.

"A"

S074348

IN THE SUPREME COURT OF CALIFORNIA

SALVADOR MARTINEZ, Petitioner

v.

FOURTH APPELLATE DISTRICT DIVISION THREE, Respondent

THE PEOPLE, Real Party In Interest

SUPREME COURT
FILED
NOV 18 1998
Robert Wandruff Clerk
DEPUTY

Application for stay and petition for writ of mandate/prohibition DENIED.

George
Chief Justice

"B"

do. _____

IN THE

SUPREME COURT OF THE UNITED STATES

SALVADOR MARTINEZ — PETITIONER
(Your Name)

VS.

STATE OF CALIFORNIA — RESPONDENT(S)

PROOF OF SERVICE

I SALVADOR MARTINEZ, do swear or declare that on this date, ~~DECEMBER 7~~ _____, 19 98, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid.

The names and addresses of those served are as follows:

SUPREME COURT OF CALIFORNIA - 303 SECOND ST. - SAN FRANCISCO, CA.

4TH APPELLATE DISTRICT, DIVISION THREE - 925 SPURGEON - SANTA ANA, CA.

CAL. ATTORNEY ~~GENERAL~~ GENERAL -300 S. SPRING -L.A., CA.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on JAN. 11, 1999

Salvador Martinez
(Signature)

AFFIDAVIT OF SERVICE BY MA ORIGINAL

Attorney:	No. 98-7809 October Term, 1998
DANIEL E. LUNGREN Attorney General of the State of California ROBERT M. FOSTER Supervising Deputy Attorney General	**SALVADOR MARTINEZ,** Petitioner, v.
110 West A Street, Suite 1100 P. O. Box 85266 San Diego, California 92186-5266	**COURT OF APPEAL OF CALIFORNIA,** Respondent.

I, THE UNDERSIGNED, say: I am a citizen of the United States, am 18 years of age or over, employed in the County of San Diego, in which County the below-stated mailing occurred, and not a party to the subject cause, my business address being 110 West A Street, Suite 1100, San Diego, California 92101.

I have served the within **BRIEF OF RESPONDENT IN OPPOSITION** as follows: To William K. Suter, Clerk, Supreme Court of the United States, Washington, D.C. 20543, an original and eleven (11) copies, of which a true and correct copy of the document filed in this cause is hereunto affixed; AND, by placing one copy in a separate envelope addressed for and to each addressee named as follows:

CINDI B. MISHKIN
STAFF ATTORNEY
APPELLATE DEFENDERS, INC.
233 A STREET, SUITE 1200
SAN DIEGO, CA 92101

SALVADOR MARTINEZ, P10344
CALIFORNIA CORRECTIONAL FACILITY
44750 60TH STREET WEST (D2-210)
LANCASTER, CA 93536

ANTHONY J. RACKAUCKAS
DISTRICT ATTORNEY
700 CIVIL CENTER DRIVE WEST
ROOM 200
SANTA ANA, CA 92701
(COURTESY COPY)

HONORABLE DANIEL J. DIDIER, JUDGE
% ORANGE COUNTY SUPERIOR COURT
CRIMINAL OPERATIONS BUREAU
P. O. BOX 22024
SANTA ANA CA 92702-2024
(COURTESY COPY)

APPELLATE DEFENDERS, INC.
233 A STREET, SUITE 1200
SAN DIEGO, CA 92101
(COURTESY COPY)

STEPHEN M. KELLY, CLERK
CALIFORNIA COURT OF APPEAL
FOURTH APPELLATE DISTRICT
DIVISION THREE
925 NORTH SPURGEON STREET
SANTA ANA, CA 92701-3709

Each envelope was then sealed and with the postage prepaid deposited in the United States mail by me at San Diego, California, on the eighteenth day of March, 1999.

There is a delivery service by United States Mail at each place so addressed or regular communication by United States Mail between the place of mailing and each place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Dated at San Diego, California, March 18, 1999.

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MAR 19 1999
OFFICE OF THE CLERK
SUPREME COURT, U.S.

Brenda J. Modkins
BRENDA J. MODKINS

No. 98-7809

Supreme Court, U.S.
FILED
JAN 15 1999
OFFICE OF THE CLERK

IN THE ORIGINAL

SUPREME COURT OF THE UNITED STATES

SALVADOR MARTINEZ — PETITIONER
(Your Name)

VS.

STATE OF CALIFORNIA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT OF THE STATE OF CALIFORNIA
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

RECEIVED
JAN 15 1999
OFFICE OF THE CLERK
SUPREME COURT, U.S.

PETITION FOR WRIT OF CERTIORARI

SALVADOR MARTINEZ - CDC NO. P-10344
(Your Name) CAL. STATE PRISON - LAC
44750 60th STREET WEST
(Address)
LANCASTER, CALIFORNIA 93536
(City, State, Zip Code)

(Phone Number)

98-7809
Martinez
v.
Court of Appeal
of CA

QUESTION PRESENTED

DOES THE CLEARLY ESTABLISHED SIXTH AMENDMENT RIGHT TO SELF REPRESENTATION AT TRIAL, BY A DEFENDANT, AS ANNOUNCED BY THIS COURT IN FARETTA V. CALIFORNIA, 45 L. Ed. 2d 562, 95 S.Ct. 2525, APPLY TO SELF REPRESENTATION ON APPEAL BY AN APPELLANT?

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[x] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

COURT OF APPEAL, STATE OF CALIFORNIA
FORTH COURT OF APPEAL, DIVISION THREE

STATE OF CALIFORNIA ATTORNEY GENERAL

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CONSTITUTION:

SIXTH AMENDMENT 9-15

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix ____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix ____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

⋈ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A & B to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
⋈ is unpublished.

The opinion of the _____ court appears at Appendix ____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____(date) on _____(date) in Application No. A-_____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

⋈ For cases from **state courts**:

The date on which the highest state court decided my case was 11/18/98. A copy of that decision appears at Appendix B.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____(date) on _____(date) in Application No. A-_____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUT. AL AND STATUTORY PROVISIONS VOLVED

SIXTH AMENDMENT RIGHT TO ASSISTANCE OF COUNSEL, RIGHT TO SELF REPRESENTATION.

BEST AVAILABLE COPY

STATEMENT OF THE CASE

PETITIONER IS THE APPELLANT IN THE PENDING APPEAL BEFORE THE COURT OF APPEAL FOR THE FOURTH APPELLATE DISTRICT, DIVISION THREE OF THE STATE OF CALIFORNIA, STYLED PEOPLE V. SALVADOR MARTINEZ, APPEAL, NO. G024042. THE CURRENT APPEAL RESULTED FROM A CONVICTION FROM THE SUPERIOR COURT OF ORANGE COUNTY, STATE OF CALIFORNIA, IN CASE NO. 98-CF-1062, FOR VIOLATING CAL. PENAL CODE 503, FOR THE OFFENSE OF EMBEZZLEMENT, ONE COUNT, AND UNDER THE 'THREE STRIKES' LAW SEC. 667, B-I. PETITIONER WAS ALLOWED TO REPRESENT HIMSELF AT TRIAL BEFORE THE ENTIRE CRIMINAL PROCEEDING. SAID REPRESENTATION WAS PURSUANT TO FARETTA V. CALIFORNIA, 95 S.CT. 2525 AT ALL CRIMINAL PROCEEDINGS. PETITIONER FILED HIS TIMELY PRO-SE NOTICE OF APPEAL.

ON SEPTEMBER 27TH, 1998, PETITIONER FILED HIS MOTION FOR SELF REPRESENTATION AND HIS WAIVER OF RIGHT TO COUNSEL FOR THE PURPOSE OF REPRESENTING HIMSELF ON APPEAL WITH THE COURT OF APPEAL, FOURTH APPELLATE DISTRICT, DIVISION THREE. PETITIONER PROVIDED AN 'UNEQUIVOCAL' ASSERTION TO THE COURT OF APPEAL OF HIS SIXTH AMENDMENT RIGHT TO REPRESENT HIMSELF ON APPEAL PURSUANT TO THIS COURT'S DECISION IN FARETTA V. CALIFORNIA, SUPRA, AND TWO NINTH CIRCUIT COURT APPEAL DECISIONS, E.G., HENDRICKS V. ZENON, 993 F. 2D 664,669 (9TH CIR. 1993) AND MOORE V. CALDERON, 108 F.3D 261 (9 TH CIR. 1996). PETITIONER FURTHER PROVIDED THE APPEALS COURT WITH A "WAIVER OF RIGHT TO COUNSEL ON APPEAL". HENDRICKS V. ZENON, SUPRA.

ON OCTOBER 16TH, 1998, THE FOURTH APPELLATE DISTRICT, (DENIED) "APPELLANT'S MOTION TO REPRESENT HIMSELF ON APPEAL" AND CITED IN RE WALKER (1976) 56 CAL. APP. 3D 225, FOR ITS DENIAL. SEE COPY OF ORDER BY PRESEDING JUDGE SILLS, APPENDIX A. THE FIFTH APPELLATE DISTRICT OF CALIFORNIA IN WALKER, SUPRA, HELD.."THAT A CRIMINAL DEFENDANT HAS NO RIGHT UNDER THE U.S. CONSTITUTION OF SELF-REPRESENTAION ON APPEAL". THE WALKER COURT BASED REASONING BECAUSE..."the FARETTA COURT DID NOT HAVE BEFORE IT ANY CLAIM OF A RIGHT TO SELF-REPRESENTATION ON APPEAL". ID. AT 228-229.

STATEMENT OF THE CASE CONTINUED:

ON OCTOBER 20TH, 1998, PETITIONER PETITIONED THE SUPREME COURT OF CALIFORNIA BY WAY OF (HIS) PETITION FOR WRIT OF PROHIBITION/MANDATE SEEKING TO RESOLVE THE ISSUE OF SELF-REPRESENTATION ON APPEAL UNDER THE RATION OF FARETTA, AND THE CONFLICT RAISED BETWEEN THE NINTH CIRCUIT COURT OF APPEAL DECISIONS AND OTHER APPELLATE COURTS DECISIONS CONFERRING THE SIXTH AMENDMENT RIGHT TO REPRESENT ONE-SELF ON APPEAL. SAID PETITION WAS FILED ON OCTOBER 27TH, 1998. ON NOVEMBER 18, 1998, THE SUPREME COURT OF CALIFORNIA (DENIED) PETITION. SEE ORDER, APPENDIX B.

PETITIONER HAS EXAUSTED STATE REMEDIES.

PETITIONER REQUEST THIS COURT TO RESOLVE THE CONFLICT RAISED AMONG THE APPELLATE COURTS AS TO WHETHER THE SIXTH AMENDMENT CONFERS THE RIGHT TO REPRESENT ONE-SELF ON APPEAL UNDER THE RATIONAL OF FARETTA.

REASON FOR GRANTING THE PETITION

TO RESOLVE THE CONFLICT AND CONTINURING SPLIT AMONG THE FEDERAL AND STATE COURTS AS TO WHETHER THE SIXTH AMENDMENT CONFERS THE RIGHT TO SELF REPRESENTATION ON "APPEAL" BASED ON THIS COURT'S DECISION IN FARETTA V. CALIFORNIA (1975) 95 S.CT. 2525. THERE ARE SEVERAL AUTHORITIES RECOGNIZING THE SIXTH AMENDMENT RUGHT, UNDER FARETTA, TO SELF REPRESENTATION ON APPEAL AND SEVERAL AUTHORITIES DECLINING TO EXTEND THE FARETTA RIGHT TO SELF REPRESENTATION ON APPEAL. PETITIONER WILL RESPECTFULLY CITE THE AUTHORITIES WHICH RECOGNIZE AND DECLINE RECOGNIZE THE SIXTH AMENDMENT RIGHT TO SELF REPRESENTATION ON APPEAL BASED ON THE RATIONAL SETOUT BY THIS COURT IN FARETTA V. CALIFORNIA, SUPRA.

A. AUTHORITIES RECOGNIZING THE RIGHT TO SELF REPRESENTATION ON APPEAL BASED ON FARETTA:

1. STATE COURTS:

THE INDIANA SUPREME COURT IN WEBB V. STATE (1980) 274 IND. 540, 412 N.E. 2D 790,792; THE MICHIGAN SUPREME COURT IN PEOPLE V. STEPHENS (1976) 71 MICH. APP. 33, 246 N.W. 2D 429,432; AND THE TEXAS COURT OF CRIMINAL APPEALS IN WEBB V. STATE (TEX. CRIM. APP. 1976) 533 S.W. 2D 780,783; HATHORN V. STATE, (TEX. CRIM. APP. 1992) 848 S.W. 2D 101, 122,123; HAVE ALL RECOGNIZED THE RIGHT TO SELF REPRESENTATION ON APPEAL (FINDING) "THE QUESTION OF WHETHER THE SIXTH AMENDMENT ALSO GUARANTEES SELF REPRESENTATION ON APPEAL HAS NOT BEEN PASSED BY THE UNITED STATES SUPREME COURT, BUT SINCE THE SIXTH AMENDMENT RIGHT TO COUNSEL IS APPLICABLE AT BOTH TRIAL AND APPEAL, DOUGLAS V. CALIFORNIA (1963) 376 U.S. 353, IT FOLLOWS THAT THERE IS A CORRELATIVE RIGHT TO REJECT COUNSEL AND PROCEED PRO-SE BOTH AT TRIAL AND ON APPEAL OF A CRIMINAL CASE. THERE IS NO MEANINGFUL DISTINCTION BETWEEN CONDUCTING A DEFENSE AT TRIAL AND PROSECUTING AN APPEAL THAT PREVENTS THE APPLICATION OF THE FARETTA RATIONALE TO THE CASE OF AN APPELLATE WHO WISHES TO REJECT REPRESENTATION BY COUNSEL AND INSTEAD REPRESENT HIMSELF ON APPEAL".

THE ARKANSAS SUPREME COURT, RELYING ON FARETTA, HELD A CRIMINAL APPELLANT PURSUING A FIRST APPEAL AS A MATTER OF RIGHT MAY AVAIL HIMSELF OR HERSELF OF THE RIGHT TO SELF REPRESENTATION UPON A VOLUNTARY AND INTELLIGENT WAIVER OF THE RIGHT TO COUNSEL. STATE V. VAN PELT (1991) 305 ARK. 125, 810 S.W. 2D 27,28; GIDRON V. STATE (1993) 312 ARK. 517, 850 S.W. 2D 331,332. THE PENNSYLVANIA SUPREME COURT, CITING, FARETTA AND PENNSYLVANIA AUTHORITY, HELD; "IT IS WELL STTLED THAT A CRIMINAL DEFENDANT OR APPELLANT HAS THE RIGHT TO PROCEED PRO SE AT TRIAL AND THROUGH APPELLATE PROCEEDING" COMM. V. ROGERS (1994) 537 PA. 581, 645 A. 2D 223, 224. A LOUISIANA APPELLATE COURT HELD..."A DEFENDANT'S RIGHT TO SELF REPRESENTATION EXTENDS TO HIS FIRST APPEAL". STATE V. WARNER (L. CT. APP. 1991) 594 SO. 2D 397,402. THE NEW MEXICO COURT OF APPEALS, STATE V. LEWIS (1986) 104 N.M. 218, 719N P. 2D 445,447, FOUND PERSUASIVE THE TEXAS DECISION IN WEBB V. STATE, SUPRA, 533 S.W. 2D 780, AND CONCLUDED.."AN ACCUSED HAS CONSTITUTIONAL RIGHT TO PROSECUTE HIS OWN APPEAL".

2. FEDERAL COURTS:

THE EIGHTH CIRCUIT IN CHAMBERLAIN V. ERICKSEN (8TH CIR. 1984) 744 F.2D 628,630 STATED: "IT IS NOT SETTLED WHETHER THE RIGHT OF SELF REPRESENTATION UNDER FARETTA EXTENDS TO A DEFENDANT'S APPEAL FROM A CONVICTION". CHAMBERLAIN OBSERVED "A DEFENDANT'S RIGHT TO FILE PRO SE BRIEF OR MOTIONS IS DISTINGUISABLE FROM A DEFENDANT'S RIGHT TO MAKE ORAL ARGUMENT BEFORE THE COURT. CITING PRICE V. JOHNSTON, 344 U.S. 266. CHAMBERLAIN CONCLUDED: "WE HAVE NO DOUBT THAT A DEFENDANT IS NOT REQUIRED TO HAVE COUNSEL FORCED UPON HIM OR HER. THIS RULE IS TRUE NOT ONLY AT TRIAL BUT ON APPEAL".

THE FIFTH CIRCUIT FOUND THE EIGHTH CIRCUIT'S REASONING IN CHAMBERLAIN PERSUAIVE. IN MYERS V. COLLINS (5th CIR. 1993) 8 F.3D 249,252, THE COURT HELD.."WHETHER AT TRIAL OR APPEAL, A DEFENDANT IS NOT REQUIRED TO ACCEPT UNWANTED COUNSEL...A STATE CRIMINAL DEFENDANT HAS A CONSTITUTIONAL RIGHT TO PRESENT PRO SE BRIEF AND MOTIONS ON APPEAL".

THE NINTH CIRCUIT COURT OF APPEALS IN CAMPBELL V. BLODGETT (9TH CIR 1991) 940 F. 2D 549 AND HENDRICKS V. ZENON (9TH CIR. 1993) 993 F.2D 664,669, HELD..."A DEFENDANT HAS SIXTH AMENDMENT RIGHT TO PROCEED PRO SE ON APPEAL, PURSUANT TO FARETTA".

A FEDERAL DISTRICT COURT IN THE SEVENTH CIRCUIT HELD THERE IS A SIXTH AMENDMENT RIGHT TO SELF REPRESENTATION ON APPEAL. U.S. V. EX REL. WILLIAMS V. O'LEARY (N.D. ILL. 1989) 712 F. SUPP. 662,665. THE DISTRICT COURT REASONED THAT..."TRIAL COUNSEL CANNOT BE FORCED ON AN UNWILLING DEFENDANT. FARETTA V. CALIFORNIA, 422 U.S. 806..ESTABLISHED THAT THE SIXTH AMENDMENT GUARANTEES A STATE CRIMINAL TRIAL DEFENDANT THE RIGHT TO SELF REPRSENTATION. THOUGH FARETTA DID NOT DIRECTLY ADDRESS THE SAME QUESTION AT THE APPELLATE LEVEL, THE IDENTICAL CONSIDERATION STATED IN FAREATTA...WOULD SEEM TO APPLY AT THAT LATER STAGE,".

B. AUTHORITIES DECLINING TO EXTEND THE FARETTA RIGHT TO SELF REPRESENTATION TO THE APPEAL.

1. STATE COURTS;

THE NEVADA SUPREME COURT IN BLANDIO V. STATE (1996) HELD...."BECAUSE THE SIXTH AMENDMENT ONLY APPLIES TO TRIAL, IT DOES NOT SUPPORT E EXISTENCE OF A RIGHT TO SELF REPRESENTATION ON APPEAL". THE TENNESSEE COURT OF CRIMINAL APPEAL IN STATE V. GILLESPIE (TENN. CRIM. APP. 1994) 898 S.W.2D 738,741, HELD.."THE SIXTH AMENDMENT RIGHT TO PROCEED PRO SE...IS LIMITED TO TRIAL PROCEEDINGS...THERE IS NO CONSTITUTIONAL RIGHT TO APPEAL...THE RIGHT TO COUNSEL ON A FIRST TIER APPEAL, THEREFORE, DERIVES FROM NOTIONS OF EQUAL PROTECTION AND DUE PROCESS UNDER THE FOURTEENTH AMENDMENT".

IN CALLAHAN V. STATE (1976) 30 MD. APP. 628, 354 A.2D 191, 193, 194, THE MARYLAND APPELLATE COURT FOUND THE RIGHT TO ASSISTANCE OF COUNSEL AT TRIAL AND THE CORRELATIVE RIGHT TO SELF REPRESENTATION AT TRIAL, AS SET FORTH IN FARETTA, DID NOT ESTABLISH A RIGHT OF SELF RESENTATION ON APPEAL, DUE TO THE "DIFFERENT RULE WHICH APPLIES AT THE APPELLATE LEVEL". THE FLORIDA SUPREME COURT DETERMINED.."THE PRINCIPLE OF FARETTA...CONCERNING SELF REPRESENTATION IS NOT APPLICABLE TO APPEALS". HILL V. STATE (FLA. 1995) 656 SO.2D 1271,1272.

2. FEDERAL COURTS:

THE FOURT CIRCUIT COURT OF APPEALS IN U.S. V. GILLIS (4TH CIR. 1985) 773 F.2D 549, 559,560, HELD THERE IS NO CONSTITUTIONAL RIGHT TO SELF REPRESENTATION ON APPEAL. THE FOURTH CIRCUIT EXPLAINED.."IN CONSTITUTIONAL ANALYSIS, THE RIGHTS TO COUNSEL AND SELF REPRESENTATION ON APPEAL STAND ON DIFFERENT GROUND. UNLIKE, THE RIGHT TO TRIAL, WHICH IS ALSO GUARANTEED BY THE SIXTH AMENDMENT, THERE IS NO CONSTITUTIONAL RIGHT TO AN APPEAL. ALTHOUGH A CONVICTED DEFENDANT HAS A RIGHT TO COUNSEL ON APPEAL, HIS IMPLICIT SIXTH AMENDMENT RIGHT TO REPRESENT HIMSELF AT TRIAL DOES NOT CARRY OVER TO THE APPEAL".

THE SEVENTH CIRCUIT COURT OF APPEALS IN LUMBERT V. FINLEY (7TH CIR. 1984) 735 F.2D 239,246, REJECTED THE CONTENTION FARETTA STAND FOR THE PROPOSITION THE SIXTH AMENDMENT GUARANTEES A RIGHT TO SELF REPRESENTATION ON APPEAL.

PETITIONER WILL RESPECTFULLY SHOW THE MOST RECENT DECISION BY A CALIFORNIA APPELLATE COURT WHICH ALSO DECLINED TO EXTEND THE FARETTA RIGHT TO SELF REPRESENTATION ON APPEAL. THE SECOND APPELLATE DISTRICT, DIVISION THREE, IN PEOPLE V. SCOTT 64 CAL. APP. 4TH 550, 75 CAL. RPTR. 2D 315 (JUNE 1998), CONCLUDED, "THE SIXTH AMENDMENT RIGHT TO THE ASSISTANCE OF COUNSEL AT TRIAL, AND THE RELATED RIGHT TO CONDUCT ONE'S OWN DEFENSE, AS RECOGNIZED IN FARETTA, DO NOT GIVE RISE TO A RIGHT TO SELF REPRESENTATION ON APPEAL". A WORTHY NOTE IN PEOPLE V. SCOTT, SUPRA, PRESIDING JUDGE KLEIN STATED..."IN VIEW OF THE SUBSTANTIAL AND CONTINUING SPLIT AMONG THE FEDERAL COURTS AS TO WHETHER THE SIXTH AMENDMENT CONFERS A RIGHT TO SELF REPRESENTATION ON APPEAL, IT MAY BE APPROPRIATE FOR THE UNITED STATES SUPREME COURT TO RESOLVE THE ISSUE".

WHEREFORE, BASED ON THE CONFLICT RAISED AMONG THE APPELLATE COURTS ON THE SIXTH AMENDMENT RIGHT TO SELF REPRESENTATION ON APPEAL, PETITIONER PRAYS THAT THIS COURT GRANT THIS PETITION TO RESOLVE THAT CONFLICT.

CONCLUSION

BASED ON THE CONFLICT RAISED AMONG THE APPELLATE COURTS ON THE SIXTH AMENDMENT RIGHT TO SELF REPRESENTATION ON APPEAL, PETITIONER PRAYS THAT THIS COURT GRANT THIS PETITION TO RESOLVE THAT CONFLICT.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Salvador Martinez

Date: JANUARY 11, 1999

CALIFORNIA

ALL-PURPOSE

ACKNOWLEDGEMENT

STATE OF CALIFORNIA)

COUNTY OF San Diego)

On March 5, 2002 before me, Jeanne L. Ruiz Notary Public
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared, Brenda J. Meakins

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Jeanne L. Ruiz (SEAL)
NOTARY PUBLIC SIGNATURE

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